

REMARKS

Applicant presents the following remarks to address all issues raised in the Office Action of May 23, 2006. Additionally, non-narrowing formal amendments are presented to adjust the dependency of claims 9-11 and 19-21, to correct minor typographical errors in claims 13 and 20, and to present new claim 24 for consideration. No new matter is added.

Independent claims 1 and 13 explicitly provide that the first and second layers of wet processed mat that are "directly bonded" together comprise different fiber formulations. In the Action, it is admitted that neither of the primary references cited, Oleszczuk et al. nor Lickfield et al., "mention at least one adjacent additional layer of different fiber formulation" (Office Action, p. 3, ¶2). While the contention is made that these references teach that "the layers of the article may be directly thermally bonded" (Office Action, p. 3, ¶1), no assertion is made that either teaches two layers of wet processed mat directly bonded together, as the claims at issue require. Indeed, the cited passages from the Oleczuk et al. and Lickfield et al. references specifically teach bonding the wet laid layers 14, 16 with the intermediate layer 12 sandwiched between them, rather than to each other.

Recognizing the shortcomings of the primary references, citation is now made to U.S. Patent No. 6,022,818 to Welchel et al. as disclosing that it is "known in the nonwoven laminate art to use an additional nonwoven layer with a different fiber formulation from the adjacent layer, so that the surface is more

aesthetically pleasing to the touch and more comfortable to the user" (Office Action, p. 3, ¶3). Consequently, claims 1 and 13 are rejected because "[I]t would have been obvious to one having ordinary skill in the art at the time the invention was made to make at least one additional adjacent supporting layer with a different fiber formulation, as taught by Welchel et al., because the layer could be designed to be more aesthetically pleasing to the touch and more comfortable to the user." (*Id.*).

In terms of establishing a *prima facie* case of obviousness, the difficulty with this position is that absolutely no teaching, motivation or suggestion of providing directly bonded layers of wet processed mat with different fiber formulations is identified anywhere in the prior art references or otherwise. Indeed, such an arrangement is contraindicated by the primary references cited, since sandwiching a meltblown microfiber layer 12 between the two outer layers 14, 16 is a critical teaching of each of them. In other words, the outer layers 14, 16 are neither of different fiber formulations nor directly bonded together.

Even assuming the "second top layer" 105 identified in the Welchel et al. reference does have a "different fiber formulation," it is neither wet processed, nor is it directly bonded to another wet processed layer, as expressly required by claims 1 and 13. Thus, none of the three references cited teach or suggest a limitation of these claims (namely, two wet processed mat layers directly bonded together), which is undoubtedly a critical requirement of a *prima facie* case of obviousness. See MPEP § 2143.03 ("To establish *prima facie* obviousness of a

claimed invention, all the claim limitations must be taught or suggested by the prior art."). In view of this missing teaching, it also cannot be the case that a skilled artisan reviewing these primary references would in any way be compelled or motivated to modify the corresponding wet-laid layers 14, 16 of the primary references to be directly bonded. Accordingly, there is simply no motivation to combine the references as proposed, which of course is a further crucial requirement of a *prima facie* case of obviousness. Therefore, claims 1 and 13 as well as claims 2-5, 9-12, 14-15 and 19-22 dependent thereon should be formally allowed.

With regard to claims 6-8 and 16-18, the primary references to Oleszczuk et al. and Lickfield et al. fail to teach or suggest a liner/insulator including first and second layers of wet processed mat directly bonded together, wherein the first and second layers have different fiber formulations. The secondary reference to Welchel, as described above, does not supply this missing teaching, either. The tertiary Insley reference does in fact disclose providing layers with thicknesses of between 0.2 to 4.0 cm, as contended, but it does nothing to address this shortcoming of the other references. However, "[t]o support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. &

Inter. 1985). The alleged reason for combining these references (an "expectation of success") fails to supply in any way the requisite substantial evidence of a motivation to combine their teachings, as is required to support an obviousness rejection. *See In re Sang-Su Lee*, 277 F.3d 1338, 1342, 61 USPQ2d 1430 (Fed. Cir. 2002) (holding arbitrary the Board's finding of obviousness because of inadequate explanation on motivation to combine, vacating, and remanding). Accordingly, claims 6-8 and 16-18 patentably distinguish over the cited references and should be allowed.

As for claim 23, the Oleszczuk et al., Lickfield et al., and Welchel references fail to teach or suggest a liner/insulator including first and second layers of wet processed mat directly bonded together where those first and second layers have different fiber formulations. The secondary references to Bansal et al. and Malaney do nothing to address this shortcoming of the primary references. Accordingly, claim 23 patentably distinguishes over the cited art and should also be allowed.

Finally, new claim 24 requires that the first and second wet processed mat layers of the liner/insulation of claim 1 have different fiber compositions. Support for this claim is found, for example, at page 9, lines 1-5 of the specification. Nothing in any of the cited prior art references teaches such an arrangement. Indeed, the Welchel et al. reference merely teaches varying the diameter or denier of the fibers, rather than the fiber compositions. Accordingly, this new claim is believed to be allowable.

In summary, all pending claims patentably distinguish over the prior art and should be formally allowed. Upon careful review and consideration it is believed the Examiner will agree with this proposition. Accordingly, the early issuance of a formal Notice of Allowance is earnestly solicited. Any fees required in connection with this response may be debited to Deposit Account 50-0568.

Respectfully submitted,

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